

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

ROGELIO HERRERA ISAIS,

Plaintiff,

vs.

UNICOR,

Defendant.

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No. 4:13CV00666 SWW

**Order**

Before the Court is defendant's motion to dismiss to which plaintiff failed to timely respond.<sup>1</sup>

The motion is granted.

Plaintiff filed this complaint *pro se* seeking damages for an injury he suffered while working for the Federal Prison Industries at FCC Forrest City in 2002. He filed a lawsuit in 2006 against the Federal Bureau of Prisons based on the same injury and the parties settled the case. According to the terms of the settlement agreement, plaintiff was to file a claim through the Inmate Compensation Program approximately 45 days before his release date, which was projected to be in 2011. Plaintiff filed a claim on September 9, 2011, and the claim was denied on February 24, 2012. Apparently, the final determination was never mailed to plaintiff because the Federal Bureau of Prisons did not have a forwarding address.

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<sup>1</sup>By Order dated January 6, 2014, the Court notified plaintiff that he is required to be familiar and comply with the Federal Rules of Civil Procedure as well as the Local Rules of this Court. The Local Rules provide that a party opposing a motion must file a response within fourteen days from the date of service of a copy of the motion. *See* Local Rule 7.2(b). The government sent a copy of the motion to plaintiff on May 16, 2014, by U.S. Mail. Allowing three (3) days for mailing, plaintiff's response to the motion was due on June 2, 2014.

The government moves for dismissal pursuant to Fed.R.Civ.P. 12(b)(1) on the basis that the exclusive remedy for inmates who are injured while working at a federal institution is the Inmate Accident Compensation Act. *See* 18 U.S.C. § 4126(c) ; *U.S. v. Demko*, 385 U.S. 149, 151-152 (1966); *Smith v. United States*, 561 F. 3d 1090, 1099 (10<sup>th</sup> Cir. 2009); *Paschal v. United States*, 302 F. 3d 768, 769 (7<sup>th</sup> Cir. 2002).

The Court finds the motion to dismiss [ECF No. 14] should be and is hereby granted. Plaintiff's complaint is dismissed.

SO ORDERED this 16<sup>th</sup> day of June, 2014.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE